

Office of Chief Counsel
Internal Revenue Service
memorandum

CC:INTL:Br3:DAJuster
PLR-P-100102-98

date: MAR 6 1998

to: Chief, Compliance Division
International Operations District CP:IN:D

from: Senior Technical Reviewer CC:INTL:Br3

subject: [REDACTED] PLR Request

On January 31, 1997, the [REDACTED] submitted a private letter ruling request under section 892 of the Internal Revenue Code. The [REDACTED] had requested a ruling that it is a controlled entity of a foreign sovereign and therefore a foreign government for purposes of section 892. The case was closed-out for failure to provide additional information within 21 days. On December 23, 1997, the taxpayer's representative submitted additional information and ask our Office to give an informal opinion as to whether the Service would likely rule favorably for the purpose of determining whether to formally re-file the ruling request.

The [REDACTED] a non-department public body, was created in [REDACTED] pursuant to the [REDACTED] for the purpose of furthering the economic development of [REDACTED]. Its activities consist of (1) business advice services to companies considering locating in [REDACTED] (2) property services to help businesses select and develop sites in [REDACTED], (3) financing (development loans, technology growth loans and equity funding), and (4) facilitating and participating in joint venture projects involving business parks, shopping centers, and hospitals.

Since [REDACTED], the [REDACTED] has employed [REDACTED] citizens as well as U.S. citizens and resident aliens in its various U.S. offices. Currently, the [REDACTED] has [REDACTED] citizens employees working in its U.S. offices. The [REDACTED] citizen employees were issued A-2 visas (non-diplomatic foreign government employee) and have never filed any U.S. tax returns. These employees are also not subject to [REDACTED] tax on their salaries as they are considered "not resident" in the [REDACTED] for [REDACTED] tax purposes. The [REDACTED] does not gather or provide tax information to the [REDACTED] employees but does do so for its employees who are US citizens or resident aliens.

On February 27, 1998, we informed the taxpayer's representative that there was a high probability that the Service would not rule favorably. Among the reasons cited were that some of the [REDACTED] activities would likely be viewed as commercial activities under §1.892-4T of the regulations. Accordingly, to the extent that the [REDACTED] did qualify as a "controlled entity" within the meaning of §1.892-2T(a)(3) of the regulations, it would be classified as a "controlled commercial entity" under section 892(a)(2)(B) of the Code. Some of the consequences of such a classification are that (1) none of the [REDACTED] U.S. source income would be exempt from

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income tax under section 892 of the Code, (2) the salaries received by the [REDACTED] citizen employees working in the U.S. offices would not be exempt from income tax under section 893(c)(1) of the Code and maybe subject FICA and FUTA taxes under sections 3121 and 3306 of the Code, and (3) to the extent that the [REDACTED] is considered to be engaged in a U.S. trade or business, bank interest earned by the [REDACTED] if any, would not qualify for exemption from income tax under section 881(d).

An additional reason cited was that the legislation creating the [REDACTED] specifically provides that (1) the [REDACTED] is not considered to be part of the [REDACTED] government, (2) none of the [REDACTED] property is considered to be government property, and (3) the [REDACTED] is not entitled to any status, immunity (including exemption from tax) or privilege that applies to the [REDACTED] government.

In conclusion, we have serious doubts that (1) the [REDACTED] is entitled to the section 892 income tax exemption and (2) the [REDACTED] citizen employees qualify for the section 893 income tax exemption on their salaries. Accordingly, we are alerting your Office so that you may take the appropriate examination action. Enclosed is a copy of taxpayer's ruling request submission and a list of its [REDACTED] citizen employees working in the United States. If you have any questions concerning this matter, please contact David A. Juster at (202) 622-3850.

Irwin Halpern

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